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No. 79-1457

In the Supreme Court of the United States

OCTOBER TERM, 1979

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1969, ET AL.,
PETITIONERS

v.

REBECCA BISE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether punitive damages may be awarded against a union that, in an effort to protect the effectiveness of an economic strike, assessed fines against members for conduct found to be protected under Title I of the Labor Management Reporting and Disclosure Act of 1959.[1]

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[1] The petition filed in this case also seeks this Court's review of a number of other questions. This brief, however, will address only Question 1.

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The United States submits this brief pursuant to the Court's order of June 2, 1980, inviting the Solicitor General to express the views of the United States.

STATEMENT

This action was brought by respondents, nine members of Local 1969, International Brotherhood of Electrical Workers (the "Union"), against petitioners—the Union and two of its officers—for injunctive relief and damages under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 412. Respondents alleged that the Union had unlawfully disciplined them on account of their exercise of rights protected under Title I of the LMRDA, 29 U.S.C. 411–415.[2]

The contested discipline had its genesis in an economic strike called by the Union on July 15, 1974, at Precision Plastics, Inc., where the respondents were employed. One respondent, Claude Stones, worked throughout the strike. He applied to the Union for a "withdrawal card," which permitted him to assume a temporary inactive status, but he never resigned his membership in the Union (RT 191, 199–200, 775–76).[3]

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[2]Title I of the LMRDA is enforced through private legal actions. Although the Secretary of Labor has no direct responsibility for administering that title, he is responsible for the administration and enforcement of Titles II, III, and IV of the LMRDA, which share with Title I the objective of "afford[ing] necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations." Section 2(b), 29 U.S.C. 401(b).

[3]"RT" refers to the transcript of the district court trial filed in the court of appeals.

The other eight respondents initially honored the strike; but in early August, 1974, each of the eight resigned from the Union and returned to work (RT 138, 261, 307, 341, 366–367, 395–396, 416, 707).

Petitioner Smith, the Union's business representative, then filed charges with the Union against each of the respondents, based in part on their return to work during the strike (RT 629–630, 641–643, 647). Shortly thereafter, on August 16, 1974, the strike was settled, and the eight respondents who had resigned rejoined the Union (RT 143, 262, 309, 343, 397, 687). The charges filed by Smith against the eight who had resigned before returning to work were dropped on advice of counsel (RT 777–778). Subsequently, however, petitioner Cripes, the Union's assistant business representative, filed additional charges against the eight, alleging that their conduct as members during the strike before resigning had violated various provisions of the Union constitution. The conduct said to violate the constitution included a wide range of behavior allegedly engaged in by one or more respondents, including the following: having knowledge that other members were considering resigning from the Union and failing to file charges or notify Union officers (respondents Bradley, Bise, Ornellas, Kaona, Carr, Pappas, and Maxine Stones, RT 816, 818–819; App. J7, J11, J21, J28, J32, J39, J41–J42);[4] meeting together to

[4]"App." references are to the separately bound appendix to the petition. "J." references are to the minutes of the Union trial board proceedings reprinted in "Appendix J" of that appendix. The district judge ruled that the minutes formed a part of the record, to which he would grant a limited evidentiary weight in reviewing the verdict, but he excluded them "from the

discuss or advocate resigning from the Union (Bradley, Klatt, Bise, Ornellas, Kaona, and Maxine Stones, RT 492, 500, 502, 551–554; Pet. App. J11–J33, J41–J43); crossing the Union's picket line without authorization (Klatt, Bise, Ornellas, and Kaona, RT 802–804, 807, 810–812; App. J11–J22, J26–J33); recruiting friends as strikebreakers (Carr, RT 814; App. J36–J39); and working during the strike without resigning (Claude Stones, RT 798–799; App. J2–J3). The charges were presented to the Union trial board, which found each of the respondents guilty[5] and assessed fines against them in amounts ranging from $200 to $1,250 (RT 799–821; App. J).

Thereafter, respondents brought this suit to enjoin petitioners from collecting the fines and to recover compensatory and punitive damages.[6] Respondents alleged that assessment of the fines violated their

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case before the jury" (RT 226–229, 235.) The court apparently reasoned that the minutes constituted untrustworthy hearsay insofar as they purported to provide information as to the actual conduct of respondents during the strike. We cite them here merely to show the conduct with which the Union charged respondents, of which it found them guilty, and for which it intended to discipline them.

[5]With one exception, each of the respondents was found guilty on all charges. Maxine Stones was found not guilty on one of the charges lodged against her: making the Union's business known to persons not entitled to the knowledge (RT 592, 817–818; App. J11)

[6]In the interim, before this suit was filed, respondent Carr had filed an unfair labor practice charge with the National Labor Relations Board, alleging that imposition of the fines violated the National Labor Relations Act, 29 U.S.C. 151 *et seq.* The Regional Director of the NLRB notified Carr that he declined to issue a complaint. The Director stated that his investigation indicated that the fines had been assessed because of

rights of free speech and assembly guaranteed by Section 101(a)(2) of the LMRDA, 29 U.S.C. 411(a)(2), and their right to a procedurally fair hearing guaranteed by Section 101(a)(5), 29 U.S.C. 411(a)(5), and that petitioners had intentionally inflicted mental distress upon them.

The district court granted summary judgment for petitioners on the procedural claims under Section 101(a)(5) (App. E). It submitted the remaining issues to the jury. With respect to the LMRDA claim, the court instructed the jurors that their task was to determine the reason why petitioners had attempted to discipline the respondents (RT 888, 897). Liability would be established if the fines had been assessed either because respondents had (1) returned to work after resigning from the Union, or (2) engaged in protected speech or conduct before resigning (RT 886, 888). The court further advised the jury that the LMRDA grants union members the right to meet together and express any views or opinions, but that disloyal conduct that threatens the very existence of a union as an institution is not protected (RT 885, 887). The jury was instructed that it could award punitive damages against petitioners if it concluded that they had acted "maliciously or oppressively" in assessing the fines (RT 893).

The jury returned a verdict in favor of respondents on the LMRDA claim, and awarded compensatory

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conduct respondents had engaged in while members of the Union, before resigning, and that the fines therefore did not violate the NLRA (Letter of Nov. 19, 1974, from Regional Director Roy O. Hoffman to Daniel Carr).

damages totalling $4,851, and punitive damages totalling $80,000. It found for petitioners on the claim for intentional infliction of mental distress (CR 937–954).[7] On remittitur, the district court reduced the punitive damage award to $20,000 and awarded $20,000 in attorney's fees (App. C; App. H). It also issued a permanent injunction prohibiting petitioner from attempting to collect the fines (App. C3).

The court of appeals affirmed the finding of liability, holding that the record supported the verdict (App. A6–A7). The court vacated the compensatory damage awards in favor of five of the respondents for lack of proof of actual injury, but sustained the punitive damage awards in all respects (App. A8–A11). The court noted this Court's recent decision in *IBEW* v. *Foust*, 442 U.S. 42 (1979), which held that punitive damages may not be awarded against a union for breach of its duty of fair representation, but it stated that *Foust* was "inapposite" (App. A10 n.6).

DISCUSSION

The petition for certiorari filed in this case presents the question whether punitive damages are available against a union for violations of Title I of the LMRDA, 29 U.S.C. 411–415. This Court expressly reserved judgment on the question in *IBEW* v. *Foust*, 442 U.S. 42 (1979), in which it held that a union member may not recover punitive damages in a suit against his union for breach of its duty of fair representation

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[7] "CR" refers to the "clerk's record" of the district court proceedings, filed with the court of appeals.

under the Railway Labor Act, 45 U.S.C. 151 *et seq.* The government's view is that, while punitive damages may be appropriate in some Title I cases, the court below erred in allowing them as a sanction against discipline imposed by a union to protect the effectiveness of an economic strike.[8]

In reserving judgment on the propriety of punitive damages under the LMRDA, the Court in *Foust* observed that the question there concerned the scope of judicially created remedies for a judicially implied cause of action. Resolution of the issue under the LMRDA, on the other hand, would require analysis of the statutory language of Title I and its accompanying legislative history. 442 U.S. at 47 n.9.

Title I of the LMRDA creates a "Bill of Rights" guaranteeing union members certain basic freedoms, including the rights of free speech and assembly, in union affairs. Section 102 of the LMRDA, 29 U.S.C. 412, creates a private right of action for union members and authorizes the courts to grant "such relief (including injunctions) as may be appropriate" for violations of Title I. This Court has declared that "Title I litigation necessarily demands that remedies 'be tailored to fit facts and circumstances admitting of almost infinite variety'" and that Section 102 was therefore designed "as a broad mandate to the courts." *Hall* v. *Cole*, 412 U.S. 1, 11 (1973), quoting *Gartner* v. *Soloner*, 384 F.2d 348, 353 (3d Cir. 1967).

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[8] We refer, of course, only to forms of discipline that, although found to be unlawfully imposed in a particular case, are in themselves legitimate, such as fines or suspension from membership.

Congress did not expressly indicate whether "appropriate" relief includes punitive damages. The legislative history of Section 102[9] is inconclusive at best on the question whether and in what circumstances punitive damages should be allowed.[10] It does,

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[9]The original bill reported from the Senate committee contained no counterpart to the current Title I. On the Senate floor, Senator McClellan offered an amendment to add a "bill of rights," which became Title I. 105 Cong. Rec. 6475–6476 (1959) *reprinted at* II *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* 1102 (1959) (hereafter "Leg. Hist."). See *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171, 178–179 (1964). The McClellan amendment contained language substantially similar to that ultimately adopted with respect to relief. It authorized the courts to award "such relief as may be appropriate, including, but without limitation, injunctions" for violations of its provisions. McClellan amendment, Sec. 103, 105 Cong. Rec. 6476 (1959), II Leg. Hist. 1102. It granted exclusive authority for bringing suit to the Secretary of Labor, however. *Ibid.* Subsequently, the Senate adopted a substitute amendment, offered by Senator Kuchel, transferring litigation authority to the individual members. See 105 Cong. Rec. 6693–6694, 6727 (1959), II Leg. Hist. 1220–1221, 1239; *Calhoon* v. *Harvey*, 379 U.S. 134, 144–145 (1964) (Stewart, J., concurring). Each of the major bills considered in the House likewise contained language similar to that ultimately adopted, authorizing "appropriate" relief for violations of Title I. See H.R. 8400, 86th Cong., 1st Sess., Sec. 102 (1959), I Leg. Hist. 631–632; H.R. 8342, 86th Cong., 1st Sess., Sec. 102 (1959), I Leg. Hist. 700–701; H.R. 8490, 86th Cong., 1st Sess., Sec. 102 (1959), I Leg. Hist. 879–880.

[10]As the parties show (Pet. 12–15; Resp. Br. in Opp. 14–16), the legislative history of the LMRDA does contain a number of statements that the legislation is, or is not, "punitive." In context, however, these statements, which are in any event hopelessly at odds, embody merely the speakers' characterizations of the nature of the substantive prohibitions contained in the Act. They are of scant relevance to the issue presented here concerning the proper remedy for violations of those prohibitions.

however, contain "numerous expressions by sponsors and other supporters of the Act indicating that § 102 was intended to afford the courts 'a wide latitude'" to determine what relief is appropriate in particular cases. *Hall* v. *Cole*, *supra*, 412 U.S. at 13.

Nevertheless, we submit that the court below erred in permitting an award of punitive damages against the Union in the context of an economic strike. In our view, although punitive damages may be permissible in some Title I suits, they are not an "appropriate" sanction under Section 102 against discipline imposed by a union to protect its strategic actions as a collective bargaining representative in its dealings with the employer whose employees it represents. Accordingly, punitive damages should not be permitted under Section 102 with respect to discipline imposed by a union to protect the effectiveness of its economic weapons during a labor dispute with an employer. This result follows from this Court's reasoning in *Foust*.

In *Foust*, this Court was required to determine whether the availability of punitive damages for a breach of the duty of fair representation would effectuate the purposes of the Railway Labor Act, which are "to facilitate collective bargaining and to achieve industrial peace." 442 U.S. at 47. Acknowledging that the prospect of punitive awards would serve to deter union misconduct, the Court concluded that this potential benefit was offset by inconsistencies between punitive damages and the statutory policies in other respects.

The Court reasoned, first, that the fundamental purpose of a fair representation suit is to make the in-

jured employee whole, and that punitive damages—by definition awards that exceed actual loss—are not necessary to that purpose. *Id.* at 48–50. Second, punitive awards could jeopardize the financial stability of unions, on whose well-being the employees' interests and the statutory policy of collective bargaining depend. *Id.* at 50–51. Third, the threat of punitive damages could chill a union's legitimate exercise of its discretion in processing employee grievances, encouraging it to press even frivolous claims. *Id.* at 51–52. Finally, punitive damages are unavailable in unfair labor practice cases arising under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, and in secondary boycott damage actions under Section 303 of the Labor Management Relations Act, 29 U.S.C. 187. The "general labor policy" embodied in the Railway Labor Act, as in these other labor-management relations statutes, the Court observed, "disfavors punishment." 442 U.S. at 52.

That same general labor policy dictates that punitive damages not be available in the circumstances here. Again, employees can be made whole by compensatory damages. And, while deterring illegal union activity is unquestionably desirable, the same problems exist here as in *Foust*. The risk of "endangering the financial stability" of unions through punitive damage awards is considerable (442 U.S. at 50); for, as this Court noted in *Foust*, punitive damages are, in effect, "'private fines'" assessed by juries "'in wholly unpredictable amounts bearing no necessary relation to the actual harm caused,'" in order to punish or deter reprehensible conduct. *Id.* at 48, 51 n.14, quoting *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). Espe-

cially in light of these considerations, permitting punitive damages to be imposed on unions in circumstances such as those here would exert a chilling effect on legitimate union activity, deterring unions, as the Court expressed it in *Foust* (442 U.S. at 52), "from taking actions clearly in the interest of union members." Such an effect would endanger the delicate balance between statutorily recognized interests of labor and management of which this Court has been especially solicitous.

While it is true that even speech or conduct by individual members that undermines a union's bargaining position during a dispute with an employer may come within the protection of Title I of the LMRDA, it is also the case that the line between protected conduct and unprotected conduct is not always clear. Thus, if threatened with the possibility of punitive damages for guessing wrong on whether discipline may be imposed, unions would be forced, in some circumstances to forego taking lawful measures that would serve the interests of the membership as a whole.

The present case illustrates the point well. Union discipline of employees for conduct during a strike is generally regulated under the National Labor Relations Act by the National Labor Relations Board, the expert body chosen by Congress to oversee labor-management relations. Specifically, the Board enforces Section 8(b)(1)(A) of the NLRA, 29 U.S.C. 158(b)(1)(A), which prohibits a union from restraining or coercing employees in the exercise of their rights, *inter alia*, to refrain from engaging in concerted activities, but which also provides that a union's right

"to prescribe its own rules with respect to the acquisition or retention of membership" shall not be impaired by the section. The Board, sustained by this Court, has drawn a careful line between union discipline for conduct—including strikebreaking activities—engaged in by employees after they have resigned from their union and union discipline for the same conduct engaged in prior to resignation. Compare *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967), with *Booster Lodge No. 405, IAM* v. *NLRB*, 412 U.S. 84 (1973), and *NLRB* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029*, 409 U.S. 213 (1972). Generally, discipline for post-resignation conduct, but not reasonable discipline for pre-resignation conduct, is held to be an unfair labor practice. The distinction recognizes, on the one hand, that "'[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent'" (*Allis-Chalmers, supra*, 388 U.S. at 181) and, on the other, that "when a member lawfully resigns from the union its power over him ends" (*Granite State, supra*, 409 U.S. at 215).

The court below assumed, and the parties apparently agreed (App. A6–A7), that resignation of union membership and post-resignation strikebreaking activities are conduct protected under Title I of the LMRDA.[11] Whether union discipline for such conduct is considered as a possible unfair labor practice under

[11] We take no position on the question whether the acts of resigning union membership and thereafter working during a strike come within the Title I protection for "[f]reedom of speech and assembly" (29 U.S.C. 411(a)(2)). The petition does not raise the question, and we therefore merely assume, for

the NLRA or as a possible violation rendering the union liable to suit under Section 102 of the LMRDA, close questions may arise: for example, it may be unclear when a particular resignation took effect or whether union discipline was imposed for strike-breaking activities preceding the resignation or for such activities following it. It is noteworthy here that a Regional Director of the NLRB refused to issue a complaint under the NLRA on charges filed by one of the respondents, concluding that the investigation did not show that the fines had been assessed for improper reasons (see pages 3-4, note 6, *supra*).

The penalty under the NLRA for union error in such matters is a remedial order, making whole employees for any injury suffered and directing the union to cease and desist from such conduct in the future. Indeed, the Board is not empowered to enter a punitive order. See, *e.g.*, *Local 60, Carpenters* v. *NLRB*, 365 U.S. 651, 655 (1961). By permitting punitive damages against the Union and two of its officers for fining em-

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purposes of this brief, that the courts below correctly determined that the fines imposed on respondents violated Title I. (Question 2 of the petition (Pet. 3) raises the different question whether—regardless of what a court determines to be a union's real motive for imposing fines—the union cannot be found to have imposed such fines in violation of the LMRDA when the union trial board was presented with "substantial evidence" that the disciplined members "had engaged in unprotected strike-breaking activities.") We also take no position on the question of what aspects of respondents' pre-resignation conduct may have been protected by Title I. The court of appeals concluded (App. A7) that the Union's charges "included pre-resignation conduct that was clearly within the protection of the LMRDA," but the court did not specify what conduct it had in mind. This question also is not raised by the petition.

ployees for the conduct concerned in this case (and permitting such damages even where no consequential damages were shown), the court of appeals established a policy that could well deter unions from taking actions that are lawful under *Allis-Chalmers* and "clearly in the interest" of the membership as a whole (*IBEW* v. *Foust*, *supra*, 442 U.S. at 52), for fear that a district court jury may see the matter differently and make a punitive damage award that would substantially deplete the union treasury.

In this area of overlapping jurisdiction, it would be anomalous to conclude that Congress intended the LMRDA to confer on juries the power to impose the "extraordinary sanction" (*IBEW* v. *Foust*, *supra*, 442 U.S. at 48) of punitive damages for conduct that the Board may redress only by a remedial order. The foreseeable result would be to divert resolution of disputes in this area from the NLRB to untutored juries[12] and, in the long run, to "impair[ ] the usefulness of labor's cherished strike weapon" (*NLRB* v. *Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 183), as well as to inhibit unions from taking other lawful actions enabling them to present a united front to management in their dealings on behalf of the employees they represent.

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[12]The discretion afforded to juries in the award of punitive damages is, as this Court noted in *Foust*, particularly troublesome where the expression of unpopular views is at issue. "Community hostility toward unions" can be potent in the circumstance of an extended economic strike. 442 U.S. at 50–51 n.14. Accord, *UAW* v. *Russell*, 356 U.S. 634, 651 (1958) (Warren, C.J., dissenting).

Of course, if Congress sought to change this labor policy through the LMRDA, then punitive damages that have such inhibiting effects might be appropriate. But the legislative history of the LMRDA suggests that, although Congress wished to prevent, in the most vigorous way permissible, certain types of egregious conduct by union hierarchies and their adherents, including "the denial of democratic processes * * *; the denial of freedom of speech and freedom of assembly * * *; brutal, physical violence, vandalism, instilled fear, and economic coercion, used to silence objectors" (105 Cong. Rec. 6470 (1959), II Leg. Hist. 1097)),[13] it did not intend for Title I to weaken unions in their vital role as the representative of employee interests against management.[14]

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[13] In cases not involving unions as bargaining representatives in their direct dealings with management, there may be circumstances, involving extreme union abuses, where punitive damages would serve the congressional purpose of eliminating corruption and promoting union democracy, without impairing other important policies embodied in the labor laws.

[14] Titles I through VI of the LMRDA stand on a different footing from Title VII in this respect. Titles I through VI, codified at 29 U.S.C. 401-531, impose regulatory standards on the internal operations of unions designed to protect union members in their relationship to the union. See *NLRB* v. *Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 193-194. Congress emphasized that these titles were not designed to affect the relationship between the union and the employer: it expressly provided in Section 603(b), 29 U.S.C. 523(b), that nothing contained in Titles I through VI should be construed "to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended."

In Title VII, which is not involved here, on the other hand, Congress did reach union-employer relations by amending the National Labor Relations Act to tighten pre-existing prohibi-

Thus, as this Court has explained (*NLRB* v. *Allis-Chalmers Mfg. Co.*, *supra*, 388 U.S. at 194), Congress sought in the LMRDA "to protect union members in their relationship to the union by adopting measures to insure the provision of democratic processes in the conduct of union affairs and procedural due process to members subjected to discipline," but the Senate Report emphasized that "in establishing and enforcing statutory standards great care should be taken not to * * * weaken unions in their role as collective-bargaining agents." S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), I Leg. Hist. 403. See also S. Rep. No. 187 at 5, I Leg. Hist. 401. And Senator McClellan, in offering the floor amendment that ultimately led to the addition of Title I to the bill reported by the Senate Committee,[15] disclaimed any such intent: "I do not propose, knowingly, to offer any amendment to the bill which I think would jeopardize, unduly restrain, retard, or hinder the progress, survival, and functioning of honest, decent unions designed to serve the workers." 105 Cong. Rec. 6473 (1959), II Leg. Hist. 1099. See also, *e.g.*, 105 Cong. Rec. 15531 (1959), II Leg. Hist. 1567 (remarks of Rep. Griffin). In its final form, then, Section 101(a)(2) of the LMRDA, 29 U.S.C.

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tions on union use of certain economic weapons regarded as illegitimate, such as the secondary boycott. Not even Title VII, however, was intended to impair the effectiveness of traditional economic weapons such as the right to strike. See 105 Cong. Rec. 15531 (1959), II Leg. Hist. 1567 (remarks of Rep. Griffin): "[I]t should be clear that there is no provision in [the bill] which impairs or affects the right of organized employees to go on strike for better wages and working conditions—and to picket in connection with such a strike."

[15] See page 7, note 9, *supra*.

411(a)(2), which guarantees union members the rights of free speech and assembly, was made subject to the proviso that it should not be construed to impair the union's right to enforce "reasonable rules as to the responsibility of every member toward the organization as an institution."

Therefore, while the congressional purposes expressed in the language and legislative history of the LMRDA may support awards of punitive damages in certain cases of extreme abuse of the principle of union democracy, they strongly indicate that punitive damages should not be available in cases, such as those involving union discipline in the economic strike context, in which the possibility of such awards would chill the exercise of unions' rights to take lawful actions to advance their members' interest in contract negotiations and other disputes with management. This proposition is in harmony with existing precedents, both this Court's decision in *Foust* and decisions of the courts of appeals under the LMRDA.

The decision by the court below is the first to award punitive damages under Title I for discipline imposed in aid of the preservation of the union's strike weapon. The other decisions in which the courts of appeals have permitted punitive awards against unions have uniformly involved purely internal disputes, in which the union imposed sanctions against members whose conduct did not interfere with the union's representation of the collective interests of all members against the employer. Each of the courts of appeals to have passed on the question in the context of internal union affairs has held that punitive damages may be recovered

where the union's conduct is egregious. See *International Brotherhood of Boilermakers* v. *Braswell*, 388 F.2d 193, 199–201 (5th Cir.), cert. denied, 391 U.S. 935 (1968); *Cooke* v. *Orange Belt District Council of Painters No. 48*, 529 F.2d 815, 820 (9th Cir. 1976); *Morrissey* v. *National Maritime Union*, 544 F.2d 19, 24–25 (2d Cir. 1976). These courts have reasoned that punitive damages serve an important purpose in deterring violations of Title I and effectuating the congressional objective of eliminating abuses and promoting democratic self-government in unions. We do not here take issue with that reasoning, since such cases can be treated as an exception to the rule laid down in *Foust*.[16]

In sum, although the court below purported to apply precedent from other circuits, it in fact extended the law in such a way as to conflict with this Court's decision in *Foust*. Moreover, although there is no direct conflict among the circuits, the question of the availability of punitive damages under Title I has aroused,

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[16] Unlike the fair representation suits considered in *Foust*, the fundamental purpose of Title I is not merely to compensate for private wrongs, but to provide a mechanism for eliminating serious abuses deemed injurious to the rights and interests of the public and employees generally. Cf. *Hall* v. *Cole*, *supra*, 412 U.S. at 8:

> [B]y vindicating his own right of free speech guaranteed by § 101(a)(2) of Title I of the LMRDA, respondent necessarily rendered a substantial service to his union as an institution and to all of its members. When a union member is disciplined for the exercise of any of the rights protected by Title I, the rights of all members of the union are threatened. And, by vindicating his own right, the successful litigant dispels the "chill" cast upon the rights of others.

as the court below noted, "much controversy" (App. A9). Thus, as the Sixth Circuit recently acknowledged, its earlier decision in *McCraw* v. *United Ass'n of Journeymen and Apprentices of the Plumbing and Pipefitting Industry*, 341 F.2d 705 (1965), while not directly ruling on the point, "strongly suggested" that punitive damages could not be awarded for violations of Title I. *Shimman* v. *Frank*, 104 L.R.R.M. 2440, 2455 (6th Cir. May 21, 1980).[17] Following *Foust*, the uncertainty in this area of the law has undoubtedly increased. In *Shimman*, the Sixth Circuit speculated that the rationale of *Foust* also extended to Title I suits, but declined to rule on the question, concluding only that the issue is "uncertain" in light of *Foust*. 104 L.R.R.M. at 2455–2456. Accordingly, we believe the Court should grant certiorari to clarify the important questions of national labor policy presented by the award of punitive damages in the circumstances of this case.

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[17] In *McCraw*, the Sixth Circuit held that damages recoverable under Title I are limited to those that directly and proximately result from the violation. 341 F.2d at 710. The Fourth Circuit endorsed this view in *Simmons* v. *Avisco, Local 713, Textile Workers*, 350 F.2d 1012, 1018–1019 (1965). However, although the district courts in those cases had ruled that punitive damages were not available under Title I, that precise question apparently was not presented on appeal.

CONCLUSION

The petition for a writ of certiorari should be granted as to Question 1.

Respectfully submitted.

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